

State of Colorado



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Director

DPA

Department of Personnel
& Administration

State Personnel Board

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Meeting Minutes August 17, 2004

The State Personnel Board met in public session on Tuesday, August 17, 2004, at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246.

The meeting was called to order by Chair John Zakhem at approximately 9:00 a.m. In addition to Mr. Zakhem, Board members Linda Siderius, Diedra Garcia, and Troy Eid were present; Elizabeth Salkind was absent.

Richard Djokic, Board Director; First Assistant Attorney General James Carr, Board Counsel; and Jane Sprague, General Professional III, were present in person.

I. REQUESTS FOR RESIDENCY WAIVERS

A. August 1, 2004 Report on Residency Waivers

Mr. Djokic reported that there no residency waiver requests which were granted in the last month.

II. PENDING MATTERS

There were no pending matters before the State Personnel Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or other final Orders of the Administrative Law Judges or the Director on appeal to the State Personnel Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Albert McNeill v. Department of Labor and Employment, State Personnel Board case number 2004G006(C).

Ms. Siderius moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Siderius, and Mr. Zakhem. Ms. Salkind was absent.

- B. Richard A. Quintana v. Department of Corrections, State Personnel Board case number 2004G067.

Mr. Eid moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Siderius seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Siderius, and Mr. Zakhem. Ms. Salkind was absent.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Fidel Kelly v. Trustees of the State Colleges in Colorado, Mesa State College, State Personnel Board case number 2004B094.

Complainant, a custodian, appealed the termination for "his consistent and long term pattern of unacceptable harassing and threatening behavior," which constituted failure to perform competently, willful misconduct and inability to perform. Complainant had engaged in an ongoing pattern of aggressiveness and confrontation with a complete stranger on campus. The ALJ found that the appointing authority was justified in assuring the protection of students and other individuals on campus, because she could not be sure Complainant would cease his violent behavior. Complainant argues that working with cleaning agents with toxic chemicals had caused his violent outbursts at work. The ALJ found that he neglected to wear safety equipment and failed to demonstrate a causal connection between his exposure to the chemicals and his behavior on the job. The ALJ found that Complainant committed the acts upon which discipline was based and concluded that Respondent's action was not arbitrary, capricious or contrary to rule or law. The ALJ affirmed Respondent's disciplinary termination and dismissed Complainant's appeal with prejudice.

Complainant had until August 11, 2004, to file an appeal of the Initial Decision of the Administrative Law Judge, and did not do so.

- B. Fred Neal v. Department of Transportation, State Personnel Board case number 2003B015.

Complainant, a materials handler, appealed his termination for a “history of corrective actions and needs improvement ratings, none of which had resulted in a change of his behavior at work,” and for making comments comparing himself to a previous co-worker who had shot and killed his supervisor and injured a co-worker at a pre-disciplinary meeting. The ALJ found that Complainant’s comments amounted to a veiled threat constituting an extremely serious violation of CDOT Workplace Violence Policy Directive 10.0; he committed the acts for which he was disciplined; the appointing authority did a thorough investigation before terminating Complainant’s employment; his refusal to respect authority contributed to his termination; he posed too great a threat to remain in his position; and he is not entitled to an award of attorney fees and costs.

Complainant has until August 23, 2004, to file an appeal of the Initial Decision of the Administrative Law Judge.

VI. REVIEW OF THE MINUTES FROM THE JULY 20, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Siderius moved to approve the minutes of the July 20, 2004 meeting as submitted. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Siderius, and Mr. Zakhem. Ms. Salkind was absent.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 20, 2004 PUBLIC MEETING:

- A. Robert Gallardo v. Department of Corrections, Division of Adult Parole and Community Corrections, State Personnel Board case number 2004G04.

The Board voted to reject the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on the following issues: (1) the parties' compliance with the grievance process; and (2) Complainant's claim of hostile work environment.

- B. Rita Kelly v. Department of Human Services, State Personnel Board case number 2004G061.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- C. Judith Schweitzer v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003G057.

The Board voted to adopt the Preliminary Recommendations of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report, Cases Scheduled for Preliminary Review, and Web Site Statistics will be reported on a quarterly basis, with the next report for the quarter ending September 30, 2004, at the October 2004 Board meeting
- Cases on Appeal to the Board and to Appellate Courts
- July 16, 2004 Notice of Public Hearing to Consider Adoption of Permanent Rules for the Risk Management Division of Department of Administration, 1 CCR 105-1 & Notice of Public Hearing to Consider Adoption of Permanent Administrative Procedures, 4 CCR 801
- Mandate/Order Affirmed in Velasquez v. Department of Higher Education, State Personnel Board Case No. 2002B040, Court of Appeals No. 02CA1740

B. OTHER BOARD BUSINESS

1. CIVIL SERVICE REFORM

Having considered the Blue Book Ballot Analysis - State Personnel System - "Final Draft," Referendum A - State Personnel System, and House Bill 04-1373, Mr. Eid moved to Support Referendum A - State Personnel System and House Bill 04-1373. Ms. Siderius remarked that 1373 had passed and that it would be after-the-fact and redundant for the Board to vote to support 1373. Mr. Eid offered to amend his motion, but Ms. Siderius declined. She stated that the State Personnel Board is an adjudicative body, and it is not the Board's role to make policy but to remain neutral. Mr. Zakhem stated that if the Civil Service Reform takes effect, the Board's adjudicatory role will be more limited, and that the Board makes policy through rulemaking. Mr. Zakhem also stated the Board's stance on Civil Service Reform is important and influential because employees look to the Board for guidance. Ms. Siderius stated that her concern is the Board's obligation to state employees that members remain objective and neutral. Ms. Garcia responded that it is

the Board members' obligation and responsibility to the workforce and taxpayers that the members be a part of the process. Her view of the role of the Board is different than Ms. Siderius' view. After discussion, Ms. Garcia seconded Mr. Eid's motion to support Referendum A, the State Personnel System, and House Bill 04-1373. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, and Mr. Zakhem. Ms. Siderius voted in opposition to the motion. Ms. Salkind was absent.

2. BOARD MEETINGS/TRAINING OUTSIDE THE DENVER AREA

Mr. Djokic confirmed that the September 21, 2004 Board meeting would be held in Durango, Colorado, at Fort Lewis College's facilities, for which there would be no charge to the Board. He is discussing the possibility of training in conjunction with that Board meeting with Human Resources contacts. The Department of Personnel and Administration will pay for the cost of travel to Durango, which Mr. Djokic estimates at \$1,500.00. For future meetings, he asked the Board to consider three per fiscal year, rather than four, because the next "third month" is December and it would be undesirable to travel out of town just before the Christmas holiday. He proposed that the second out-of-town meeting be held in January, February or March, depending on the weather, in Grand Junction, and the final out-of-town meeting for the fiscal year be held along the Front Range, possibly in Sterling, Colorado. Ms. Siderius inquired as to teleconferencing capability for the Durango meeting; Mr. Djokic said there would be teleconferencing capability at the Fort Lewis College facilities and that a teleconference could be set up by MCI. Mr. Zakhem stated that he would like the Board to be given a tour of Fort Lewis and that Fort Lewis personnel be given an opportunity to bring their issues to the Board's attention.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Mr. Eid commented that he appreciated the new format of the Agenda with the additional information supplementing the Agenda items. Ms. Garcia stated that she agreed with Mr. Eid.

The Board did not go into Executive Session and the meeting ended by consensus.

X. EXECUTIVE SESSION

A. Case Status Report

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APPROVED THIS 21st DAY OF SEPTEMBER, 2004.

John Zakhem, Chair

Diedra Garcia, Vice-Chair

Troy Eid, Member

Linda Siderius, Member